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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,038	11/10/2000	ROBERT A. KOCH	00099	3243
38516 7590 10/10/2008 SCOTT P. ZIMMERMAN, PLLC PO BOX 3822 CARY, NC 27519				
EXAMINER NEURAUTER, GEORGE C				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/709,038

Applicant(s)

KOCH, ROBERT A.

Examiner

George C. Neurauter, Jr.

Art Unit

2443

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 7-9, 12, 14-20, 22-29, 31, 32 and 34-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 7-9, 12, 14-20, 22-29, 31, 32 and 34-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1, 3-4, 7-9, 12, 14-20, 22-29, 31-32, 34-36, and 37-47 are currently presented and have been examined.

Response to Arguments

Applicant's arguments filed 26 August 2008 have been fully considered but they are not persuasive.

The Applicant argues that Armstrong does not teach or suggest retrieving presence information of the second user indicating the second user's presence at a plurality of contact devices by querying at least one of i) a provider to determine the presence information and ii) a contact device to determine the presence information, sending a location request message to a home location register associated with the second user, and receiving a response to the location request message that indicates availability. The Examiner respectfully does not agree in view of the teachings of Armstrong and the Applicant's admitted prior art which the Examiner cites as evidence that Armstrong inherently teaches the claimed limitations.

Armstrong clearly taught retrieving presence information of the second user indicating the second user's presence at a plurality of contact devices by querying at least one of i) a provider to determine the presence information and ii) a contact device to determine the presence information (see at least column 4, line 49-column 5, line 9 and column 14, line 62-column 15, line 12).

Further, in column 4, line 58-column 5, line 5, Armstrong disclosed:

"A point of presence is a source of information about whether a watched party 13 is available for contact on a multiple access network 11, which access networks the watched party 13 is presently available on, where that watched party 13 is located on each access network, and/or by which method that watched party 13 should preferably be contacted. A PCP 10 provides a single point of presence despite the fact that a watched party 13 may have more than one terminal and/or different types of terminals for accessing the network in different modes and possibly by different access networks. A PCP 10 may also provide context information rather than just raw presence information. Raw presence information is unprocessed information about the availability, location and capability of a watched party 13 on the communications network."

In column 14, lines 62-67, Armstrong disclosed:

"Event gateways 53-1 receive raw data from the access networks, pre-process this and pass it onto the raw presence manager 55 via event gateway 53-2. Examples of these events are keyboard activity on a terminal, movement between cells or change in Visitor Location Register (VLR) in a cellular communications network..."

On page 15, lines 8-15, the specification discloses:

"The communications server 18 sends an IS-41 LocationRequest message to the Home Location Register (HLR) 209 containing A's mobile telephone number. IS-41 is a standard protocol used in wireless applications. When a wireless telephone 44 is turned on, a request is sent to the HLR 209 alerting it that the wireless telephone 44 is activated and can accept calls. If a telephone call to the wireless telephone 44 is initiated, HLR 209 alerts the wireless telephone to ring because it is available to accept

telephone calls. The HLR 209 sends an IS-41 LocationRequest Return Result back to the communications server 18, indicating whether or not A's mobile telephone 44 is turned on."

In view of the teachings of Armstrong and the admissions of the specification regarding wireless protocols, it is clear that Armstrong disclosed sending a location request message to a home location register associated with the second user and receiving a response to the location request message that indicates availability in a cellular communications network since Armstrong clearly discloses that "Event gateways 53-1 receive raw data from the access networks, pre-process this and pass it onto the raw presence manager 55 via event gateway 53-2. Examples of these events are...movement between cells or change in Visitor Location Register (VLR) in a cellular communications network" and "A point of presence is a source of information about whether a watched party 13 is available for contact on a multiple access network 11, which access networks the watched party 13 is presently available on, where that watched party 13 is located on each access network...Raw presence information is unprocessed information about the availability, location and capability of a watched party 13 on the communications network." In these disclosures, Armstrong clearly shows sending a location request message and receiving a response indicating availability of a user in a cellular telephone communications network and, therefore, these limitations are anticipated by Armstrong since the Applicant admits that cellular communication networks use a "IS-41" protocol to accomplish these steps in the specification. Therefore, the Applicant's arguments that these limitations are patentable

distinct from the prior art is simply not persuasive and it is clear that, in view of the Applicant's admitted prior art, Armstrong at least inherently, if not expressly, disclosed these specific steps based on the evidentiary teachings of the Applicant's admitted prior art.

Therefore, the claims are not in condition for allowance.

Regarding the Applicant's arguments regarding the Examiner's use of Official Notice, the Applicant is directed to MPEP 2144.03. The prosecution history clearly shows that the Applicant failed to adequately traverse the Official Notice. MPEP 2144.03 states that "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate." The Examiner has explained such previously that the Applicant completely failed to treat the Official Notice in the response filed 8 February 2008. Therefore, the Official Notice stands and the subject matter encompassed by the Official Notice continues to be considered admitted prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-4, 7-9, 12, 14, 16-19, 22-29, 31-32, 34-36, and 37-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,807,423 to Armstrong et al.

Regarding claim 1, Armstrong discloses a method for presenting presence information to a first user (referred to within the reference as "watching party"), comprising:

storing profile information associated with a second user ("watched party");

translating the second user's profile information in to a code number ("unique presence management identifier" or "PCP identifier"); (column 6, lines 7-24 and 39- 47) (see also column 8, line 46-column 9, line 63, specifically column 9, lines 17-26);

exchanging the second user's code number with the first user, thus allowing the first user to access the second user's profile (see at least column 6, lines 39-47) (see also column 8, line 46-column 9, line 63, specifically column 9, lines 17-26);

receiving a request to initiate contact with the second user; retrieving the second user member's code number and using the code number as a pointer to retrieve the

second user's profile information; retrieving presence information of the second user indicating the second user's presence at a plurality of contact devices by querying at least one of i) a provider to determine the presence information and ii) a contact device to determine the presence information, sending a location request message to a home location register associated with the second user, and receiving a response to the location request message that indicates availability; and presenting the second user's presence information to the first user, the presence information indicating the second user's presence at the plurality of contact devices. (see at least column 6, lines 39-61, specifically "give a list of available communication methods" to the first user; see also column 5, lines 24-55, column 4, lines 11-20, specifically lines 16-20; column 4, line 49-column 5, line 9 and column 14, line 62-column 15, line 12; column 5, lines 10-55, specifically lines 23-25, 32, and 39-43; column 6, lines 1-5 and 25-38, specifically lines 4 and 35-36; column 14, line 57-column 15, line 36, specifically column 15, lines 1-2)

Armstrong does not expressly disclose wherein the second user's profile requiring a password to access the profile and exchanging the second user's password with the first user, however, Armstrong does disclose wherein users access a profile management system in order to access their profile (column 13, lines 46-49; column 14, lines 15-22). Armstrong also generally discloses wherein the second user logs in to services such as the Internet and other services (column 6, lines 31-38).

The Applicant has failed to address the Examiner's assertion of Official Notice. A general allegation that the claims define a patentable invention without any reference to the Examiner's assertion of Official Notice would be inadequate. If the Applicant does

not traverse the examiner's assertion of official notice, the Examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because the Applicant failed to traverse the Examiner's assertion of official notice. See MPEP 2144.03. Therefore, the subject matter that is the subject of the Examiner's Official Notice is considered to be admitted prior art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to require a password to access a profile since the Applicant admits that password protection of a user's account for the purposes of preventing unauthorized access was known by those of ordinary skill in the art at the time the invention was made and one of ordinary skill in the art would have been motivated to modify the teachings of Armstrong to include the well known subject matter in the art to achieve the claimed invention since the well known subject matter was well within the level of knowledge and skill of one of ordinary skill and would have reasonably suggested, given this knowledge, that, in view of the teachings of Armstrong, it would be obvious to achieve the limitations of the claim.

It further would have been obvious to one of ordinary skill at the time the invention was made to modify the teachings of Armstrong to include the password during an exchange with the first user in light of the above reasons for the obviousness of passwords in the context of profile account protection and also in light of the disclosures of Armstrong, which disclose exchanging the unique code with the first user and wherein the first user and the second users are able to belong to an "aggregate" as

described in Armstrong so as to have a shared profile of both users which may be included as part of the second user's profile and allow the users to modify the profile in an equitable fashion (see at least column 6, lines 39-47) (see also column 8, line 46-column 9, line 63, specifically column 9, lines 17-26). These disclosures would have reasonably suggested to one of ordinary skill in the art that, since the shared profile of the user's may be protected by a password in order for only the users to be able to access the shared profile, the second user should have the password of the shared profile so that the first user is able to access the shared profile of the users. Therefore, it would have been obvious to one of ordinary skill in the art to achieve the claimed invention.

Regarding claim 3, Armstrong discloses the method of claim 1, further comprising receiving authorization to present the second user's presence information to the first user. (column 14, lines 4-8; column 15, line 60-column 16, line 12)

Regarding claim 4, Armstrong discloses the method of claim 1, wherein the retrieving the presence information comprises retrieving presence information for a plurality of addresses that represent at least one of different types of communications and different types of the contact devices. (column 3, lines 47- column 4, line 6)

Regarding claim 7, Armstrong discloses the method of claim 1, wherein presenting the second user's presence information comprises presenting the presence information in an electronic interface including via at least one of a computer and a telephone. (column 1, lines 14-27; column 6, lines 48-61)

Regarding claim 8, Armstrong discloses the method of claim 1, wherein retrieving the presence information is at least in part determined based on a time or a day of week preference from a profile of the second user. (column 4, lines 6-10; column 6, lines 7-24, specifically lines 15-22; column 5, line 35)

Regarding claim 9, Armstrong discloses the method of claim 1, further comprising presenting a graphical indicator that indicates the second user's presence at the plurality of contact devices. (column 1, lines 14-27; column 6, lines 48-61)

Regarding claim 12, Armstrong discloses a system for presenting presence information to a sender of a communication, comprising:

an input for receiving presence information of a recipient indicating the recipient's presence at a plurality of contact devices; and a processor coupled with the input, the processor storing profile information associated with the recipient, the recipient's profile requiring a password to access the profile, the processor translating the recipient's profile information into a code number, the processor exchanging the recipient's code number and password with the sender, thus allowing the sender to access the recipient's profile information, the processor receiving a request to initiate contact with the recipient, the processor retrieving the recipient's code number and using the code number as a pointer to retrieve the recipient's profile information, the processor retrieving presence information of the recipient indicating the recipient's presence at a plurality of contact devices by queuing i) a provider to determine the presence information and ii) a contact device to determine the presence information, the processor sending a location request message to a home location register associated

with the recipient, the processor receiving a response to the location request message that indicates availability, the processor causing presentation of the recipient's presence information to the sender, the presence information indicating the recipient's presence at a plurality of contact addresses, the processor receiving a selection from the sender that selects a contact address to which the communication is addressed, and the processor initiating the communication to a destination, wherein the destination of the communication is the contact address selected by the sender. (column 6, lines 48-61, specifically lines 60-61) (note that the selection from the list is inherent within the teachings of Armstrong) (see also column 5, lines 24-55, column 4, lines 11-20, specifically lines 16-20; column 4, line 49-column 5, line 9 and column 14, line 62-column 15, line 12; column 5, lines 10-55, specifically lines 23-25, 32, and 39-43; column 6, lines 1-5 and 25-38, specifically lines 4 and 35-36; column 14, line 57-column 15, line 36, specifically column 15, lines 1-2)

Regarding claim 14, Armstrong discloses the system of claim 12, wherein the processor initiates a telephone call to a telephone number associated with the selected contact address. (column 6, lines 9-13)

Regarding claim 16, Armstrong discloses the system of claim 12, wherein the processor initiates an electronic message to an email address. (column 6, lines 9-13)

Regarding claim 17, Armstrong discloses the system of claim 12, wherein the processor initiates an electronic message to a text messaging address. (column 6, lines 9-13; column 16, lines 30-41)

Regarding claim 18, Armstrong discloses the system of claim 12, wherein the processor processes the recipient's presence information for display to the sender. (column 1, lines 14-27; column 6, lines 48-61)

Regarding claim 19, Armstrong discloses the system of claim 12, wherein the processor presents a graphical indicator that indicates the recipient's presence at the plurality of contact device addresses. (column 1, lines 14-27; column 6, lines 48-61)

Regarding claim 22, Armstrong discloses the system of claim 12, wherein the selection from the sender is based on the presence information. (column 6, lines 48-61, specifically lines 60-61)

Regarding claim 23, Armstrong discloses the system of claim 12, wherein the input that receives the presence information receives a notification that the contacts address is active. (column 14, line 62-column 15, line 14; column 16, lines 42-55)

Claims 24-29 and 31-35 are also rejected since these claims recite substantially the same limitations as recited in claims 12, 14-21, 23, and 22 respectively.

Regarding claim 36, Armstrong discloses a computer readable medium according to claim 24, further comprising instructions for causing display of an icon to indicate presence at least one of a phone, a personal digital assistant, a pager, a computer, and an interactive television. (column 1, lines 14-27; column 6, lines 48-61)

Claims 37-42 are also rejected since these claims recite substantially the same limitations as recited in claims 12, 14-17, and 22 respectively.

Claims 43-47 are also rejected since these claims recite substantially the same limitations as recited in claims 12, and 14-17 respectively.

Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6 807 423 to Armstrong et al in view of US Patent 6 714 519 to Luzzatti et al.

Regarding claim 15, Armstrong discloses the system of claim 12.

Armstrong does not disclose wherein the processor initiates an Internet Telephony call from the sender to the recipient, however, Luzzatti does disclose these limitations within the context of selection of a plurality of recipient devices by a sender after retrieving the presence of the recipient at each of the plurality of devices (column 1, line 41; column 2, line 34- column 3, line 18; column 5, lines 39-45, specifically lines 40- 41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since Luzzatti discloses that Internet Telephony calls are used to initiate communications between two users over the Internet (column 1, lines 38-54). In view of these specific advantages and that the references are directed to retrieving a presence of a recipient at a plurality of devices and selecting, by a sender, a specific device to initiate communications, one of ordinary skill would have been motivated to combine these references and would have considered them to be analogous to one another based on their related fields of endeavor, which would lead one of ordinary skill to reasonably expect a successful combination of the teachings.

Regarding claim 20, Armstrong discloses the system of claim 12.

Armstrong does not expressly disclose wherein the processor causes display of an icon to initiate the communication from the sender to the address associated with the selected contact addresses, however, Armstrong does disclose displaying graphical indicators that indicates the recipient's presence at the plurality of contact device addresses and inherently allows the sender to select an address to initiate communications (column 1, lines 14-27; column 6, lines 48-61).

Luzzatti discloses wherein a processor causes display of an icon in the context of displaying presence information to a sender. (column 3, lines 6-17; column 5, lines 20-25)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Armstrong to include the graphical icon of Armstrong since one of ordinary skill would have found it obvious that, in view of the teachings of Armstrong and Luzzatti and the knowledge of one of ordinary skill in the art, the use of an icon on a graphical user interface is used to indicate information to a user and allow the user to select information on a display by visual inspection. Therefore, the teachings of these references would have reasonably suggested to one skilled in the art that using an icon as disclosed in Luzzatti within a list of available communication methods which allows the sender to select an address to initiate communications would have been obvious in view of the teachings of these references. In view that the references are directed to retrieving a presence of a recipient at a plurality of devices and selecting, by a sender, a specific device to initiate communications using a graphical user interface, one of ordinary skill would have been

motivated to combine the teachings of these references and would have considered them to be analogous to one another based on their related fields of endeavor, which would lead one of ordinary skill to reasonably expect a successful combination of the teachings.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is 571-272-3918. The examiner can normally be reached on the hours between 8:30am-5:00pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger, can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C. Neurauter, Jr./
Primary Examiner, Art Unit 2443